



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0279

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37674.

The City of Houston (the "city") received a request for information concerning the Cypresswood Restorative Care Center. You state that the city has no objections to providing most of the information responsive to the request. However, you have submitted three documents which you contend are excepted from required public disclosure under section 552.101 of the Government Code as it incorporates the doctrine of common-law privacy.

For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.


540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric

treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We have reviewed the submitted information and agree that portions of the documents contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person. However, the complaints of misconduct, abuse, or neglect of residents of a nursing home are of legitimate public interest. We do not, however, believe the legitimate public interest in this information extends to the identities of the patients. *See generally, Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-- El Paso 1992, writ denied). We have marked the identifying information that must be withheld under common-law privacy. The remaining information must be released.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/ch

Ref: ID# 37674

Enclosures: Marked documents

cc: Mr. Tom Rowatt
Law Offices of Riddle & Long, L.L.P.
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Houston, Texas 77069
(w/o enclosures)

¹Although one of the documents indicates that the complainant was asked if she'd like to refer the case to the Texas Department of Human Services, there is no indication in any of the documents that the cases were referred to a state agency for investigation. *See* Health & Safety Code § 142.009(d) ("reports, records, and working papers used or developed in an investigation [of home health, hospice, or personal assistance services] made under this section [by the Department of Health or its authorized representative] are confidential and may not be released or made public except" under circumstances not at issue in this ruling).